



## **DEPARTMENT OF TRANSPORTATION**

### **Office of the Secretary**

**[Docket No. DOT-OST-2018-0190]**

### **Aviation Consumer Protection Advisory Committee; Notice of Public Meeting**

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Notice of public meeting.

**SUMMARY:** This Notice announces a two-day public meeting of the Aviation Consumer Protection Advisory Committee (ACPAC), to be held virtually. On the first day, the ACPAC will consider the Department's notice of proposed rulemaking (NPRM) on Enhancing Transparency of Airline Ancillary Service Fees. On the second day, the ACPAC will deliberate on three topics: information provided to consumers adversely affected by airline delays or cancellations, availability of airline flight information, and the Department's NPRM on Airline Ticket Refunds and Consumer Protections.

**DATES:** The virtual meeting will be held on Thursday, December 8, 2022, from 10:00 a.m. to 5:30 p.m., and on Friday, December 9, 2022, from 10:00 a.m. to 5:30 p.m. Eastern Standard Time. The meeting is open to the public, subject to any technical and/or capacity limitations. Requests to attend the meeting must be submitted to

[https://usdot.zoomgov.com/webinar/register/WN\\_V2zwVF3RQfuoOkyYFVqvda](https://usdot.zoomgov.com/webinar/register/WN_V2zwVF3RQfuoOkyYFVqvda). We encourage interested parties to register by December 1, 2022. Communication Access Real-time Translation (CART) and sign language interpretation will be provided during the meeting. Requests for additional accommodations because of a disability must be received at [ACPAC@dot.gov](mailto:ACPAC@dot.gov) by December 1, 2022. If you wish to speak during the meeting, you should submit a request at [ACPAC@dot.gov](mailto:ACPAC@dot.gov) no later than December 1, 2022.

**ADDRESSES:** The virtual meeting will be open to the public and held via the Zoom Webinar Platform. Virtual attendance information will be provided upon registration. An agenda will be available on the

Department's Office of Aviation Consumer Protection website at <https://www.transportation.gov/airconsumer/ACPAC> in advance of the meeting.

**FOR FURTHER INFORMATION CONTACT:** To register and attend this virtual meeting, please use the link: [https://usdot.zoomgov.com/webinar/register/WN\\_V2zwVF3RQfuoOkyYFVqvda](https://usdot.zoomgov.com/webinar/register/WN_V2zwVF3RQfuoOkyYFVqvda).

Attendance is open to the public subject to any technical and/or capacity limitations. For further information, please contact Cristina Draguta, Attorney-Advisor, by email at [Cristina.Draguta@dot.gov](mailto:Cristina.Draguta@dot.gov) or telephone at (202) 366-6137.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The ACPAC evaluates the Department of Transportation's aviation consumer protection programs and provides recommendations to the Secretary for improving them, as well as recommending any additional consumer protections that may be needed.

During the June 28, 2022, meeting of the ACPAC, the subject of transparency of airline ancillary service fees was considered as members heard presentations about previous Department actions in this area and the perspectives of various stakeholders. On September 26, 2022, the Department announced the Enhancing Transparency of Airline Ancillary Service Fees NPRM (RIN 2105-AF10) (Ancillary Fees Transparency NPRM) and made the rulemaking available on its website and [regulations.gov](https://www.regulations.gov). Since then, the Ancillary Fees Transparency NPRM has been published in the Federal Register and is available at <https://www.federalregister.gov/documents/2022/10/20/2022-22214/enhancing-transparency-of-airline-ancillary-service-fees>. The ACPAC will meet on December 8, 2022, to hear from the public and consider the proposals in the Department's Ancillary Fees Transparency NPRM.

The ACPAC will also meet on December 9, 2022, to discuss, deliberate, and decide on recommendations, if any, to the Department on three topics considered at previous ACPAC meetings: (1) information provided to consumers adversely affected by airline delays or cancellations (December 2, 2021 meeting); (2) availability of airline flight information (June 29, 2022 meeting); and (3) the Department's Airline Ticket Refunds and Consumer Protections NPRM (August 22, 2022 meeting).

More information regarding prior meetings, including recordings of meetings, can be found on the ACPAC webpages available here: <https://www.transportation.gov/airconsumer/ACPAC>.

## **II. Agenda**

### **A. December 8, 2022, Meeting**

During the December 8, 2022, meeting, the Department will provide an opportunity for public input and continue the discussion on airline ancillary service fee transparency. Pursuant to 49 U.S.C. 41712, which prohibits U.S. air carriers, foreign air carriers, and ticket agents from engaging in unfair or deceptive practices in the sale of air transportation, the Department's Ancillary Fees Transparency NPRM proposes to require carriers and ticket agents to clearly disclose baggage fees, change fees, and cancellation fees to consumers whenever fare and schedule information is provided to consumers for flights to, within, and from the United States. The Ancillary Fees Transparency NPRM also proposes to require these entities to clearly disclose whenever fare and schedule information is provided the fees for adjacent seating, if any, to consumers traveling with young children on flights to, within, and from the United States, and make these fees transactable. The Department is proposing that all of these disclosures be provided on a passenger-specific or itinerary-specific basis. The Department is also proposing to require that carriers provide useable, current, and accurate information regarding these fees to ticket agents that sell or display the carrier's fare and schedule information.

The public should submit comments to the rulemaking Docket (DOT-OST-2022-0109) on or before December 19, 2022, to ensure that comments submitted will be considered. The Department also intends to consider the discussion and information provided during this December 8, 2022, meeting of the ACPAC to inform this rulemaking. This meeting will also allow the ACPAC to hear from all interested stakeholders regarding the Department's proposals and what the ACPAC should consider as it determines what recommendations, if any, to make to the Department on this topic.

### **B. December 9, 2022, Meeting**

The ACPAC will consider and deliberate on three topics at the December 9, 2022, meeting that were previously discussed: (1) information provided to consumers adversely affected by airline delays or cancellations (December 2, 2021, meeting); (2) availability of airline flight information (June 29, 2022, meeting); and (3) the Department's Airline Ticket Refunds and Consumer Protections NPRM (August 22, 2022, meeting). More information regarding prior meetings, including recordings of meetings, can be found on the ACPAC webpages available here:

<https://www.transportation.gov/airconsumer/ACPAC>. The ACPAC will consider each topic carefully and deliberate and decide on recommendations, if any, to make to the Department on these topics.

### **III. Public Participation**

#### **A. December 8, 2022, Meeting**

The December 8, 2022, meeting will begin at 10:00 am EST, and the Department will provide time for a welcome, introductions, and opening remarks. The meeting will then transition to an overview of the NPRM and questions and comments from the ACPAC members. This discussion will be followed by comments from members of the public. There will be a lunch break and further input and discussion will continue in the afternoon to help inform the ACPAC members on what they should consider when making recommendations, if any, on this topic in the future. While the Department seeks comment on any aspect of the proposed rule, the Department summarizes the main proposals of the NPRM below and requests information on the following specific questions regarding these proposals:

## 1. Disclosure of Baggage Fees

### **The Proposal:**

*Covered Entities: U.S. air carriers, foreign air carriers, and ticket agents*

*Proposed Disclosure Requirement: provide the fee for a first checked bag, a second checked bag, and a carry-on bag, adjusted based on passenger-specific information*

*Location/Method of Disclosure: website marketed to U.S. consumers where air transportation is advertised or sold; in-person or on the phone with an agent*

*Timing of Online Disclosure: first page displaying search results that include fare and schedule information in response to a consumer search for air transportation (no links or pop-ups)*

*Timing of In Person or Phone Disclosure: at the time a fare is quoted for an itinerary*

*Other Proposed Requirements: seller must refund money collected for fees if the fee was not properly disclosed; weight and dimension limitations must be displayed (links or pop-ups acceptable); disclosure to consumer if checking or carrying a bag is prohibited under fare category*

**Question 1(a):** The Department requests comment on whether disclosure of baggage fees by links or rollovers should be permitted. The Department seeks comment on whether links and rollovers would provide the necessary flexibility to allow for design displays that would enhance the user experience and encourage innovation as technology changes. Are additional flexibilities needed to ensure the display of ancillary service fee information does not result in screen clutter? Do rollovers work on mobile devices that have no cursor to hover over a link?

**Question 1(b):** The Department requests comment on the benefits, risks, and practicability of requiring carriers and ticket agents to enable consumers to conduct anonymous or passenger-specific itinerary searches and to provide fee information tailored to the search type.

**Question 1(c):** The Department requests comment on its proposal that online bag fee disclosures be disclosed at the first point in a search process where a fare is listed in connection with a specific itinerary.

**Question 1(d):** The Department seeks comment on whether the volume of information proposed to be displayed would assist or overwhelm consumers and whether or not an opt-out provision would be beneficial to consumers. We are also interested in learning what impact, if any, lack of an opt-out

provision has on the speed of search results or particular display options an airline or ticket agent may provide. For commenters advocating an opt-out option, we also request information about how to define requirements for opt-out options that would adequately protect consumers and ensure any opt-out option is not confusing or abused, for example, preventing opt-outs accomplished through a “click wrap” or “browser wrap” tactic that does not represent a meaningful, intentional choice.

**Question 1(e):** The Department seeks comment on whether the proposed disclosure requirements should also extend to airline and ticket agent mobile apps, and whether there are any practical distinctions between information accessed on mobile websites and mobile apps.

**Question 1(f):** The Department seeks comment on its proposals that carriers and ticket agents inform consumers of the bag fees that apply when consumers attempt to purchase airline tickets offline, in person, or on the phone. The Department is also interested in obtaining input on alternative options for providing such fee information on the phone or in person (e.g., explaining that fees may apply and referring the consumer to the carrier or ticket agent’s website, provided that the website is accessible to consumers with disabilities).

## **2. Disclosure of Change and Cancellation Fees and Policies**

### **The Proposal:**

*Covered Entities: U.S. air carriers, foreign air carriers, and ticket agents*

*Proposed Disclosure Requirement: provide the fee to change and cancel the reservation, adjusted based on fare category and passenger-specific information*

*Location/Method of Proposed Disclosure Requirement: website marketed to U.S. consumers where air transportation is advertised or sold; in-person or on the phone with an agent*

*Timing of Online Disclosure: first page displayed when a consumer conducts a search for air transportation when fare and schedule information is shown (no links or pop-ups)*

*Timing of In Person or Phone Disclosure: at the time a fare is quoted for an itinerary*

*Other Proposed Requirements Associated with Disclosure: must display a summary of the cancellation and change policies applicable to the itinerary displayed (links or pop-ups allowed)*

**Question 2(a):** The Department requests comment on whether display of cancellation and change fees by links or rollovers should be permitted. Are there preferred methods for presenting the change and cancellation policy information?

**Question 2(b):** The Department requests comment on the timing of the proposed online fee disclosures. Should the Department allow the proposed disclosures to be provided later in the ticket purchase process than proposed in this NPRM?

**Question 2(c):** How should the Department address the potential that a consumer could also be required to pay a fare difference between the old and new tickets resulting from airline dynamic pricing models? A ticket change may result in a material change in fare that is potentially a larger component of the overall ticket price relative to the change fee itself. Will displaying only the change fee result in consumer confusion?

### **3. Disclosure and Transactability of Family Seating Fees**

**The proposal:**

*Covered Entities: U.S. air carriers, foreign air carriers, and ticket agents*

*Proposed Disclosure Requirement: provide the fee, if any, for a passenger age 13 years or under to be seated adjacent to the seat of an accompanying adult in the same class of service*

*Location/Method of Proposed Disclosure: website marketed to U.S. consumers where air transportation is advertised or sold; in-person or on the phone with an agent*

*Conditions for Disclosure: consumer seeks to purchase air transportation in which at least one passenger is 13 years of age or under; carrier imposes a fee for a passenger 13 or under to be seated next to an accompanying adult*

*Timing of Online Disclosure: whenever fare and schedule information is provided, alongside the quoted fare associated with each itinerary search result (no links or pop-ups permitted)*

*Timing of In Person or Phone Disclosure: at the time a fare is quoted for an itinerary*

*Other Proposed Requirements (Transactability): must enable consumer to select and purchase the seat at the time the seat fee is disclosed*

**Question (3)(a):** Should disclosure be limited to family seating fees or would additional information regarding airline family seating policies be useful to consumers during the ticket purchase process?

**Question (3)(b):** The Department seeks comment on whether airlines' response to this rulemaking could include reducing or eliminating fees for children to sit next to accompanying adults.

**Question (3)(c):** What disclosure should be required, if any, when no adjacent seats are available at the time of the consumer's ticket purchase?

**Question (3)(d):** The Department requests comment on whether to permit the disclosure of the family seating fee through links or pop-ups.

**Question (3)(e):** Should the Department be more prescriptive about family seat fee disclosure requirements (e.g., requiring that websites be modified to enable consumers to indicate whether a passenger will be 13 or under prior to initiating the search)?

**Question (3)(f):** Are there technical or other practical considerations for requiring that family seating fees be disclosed and transactable?

**Question (3)(g):** The Department requests comment on the timing of the proposed online family seating fee disclosures. Should the Department permit these disclosures to be provided later during the booking process, such as after the stage when a consumer inputs passenger name and age information?

#### **4. Sharing of Data and Transactability**

**The proposal:**

*Covered Entities: U.S. air carriers and foreign air carriers that provide fare, schedule, and availability information to ticket agents to sell or display the carrier's flights directly to consumers*

*Proposed Requirement: provide useable, current, and accurate information of the fee rules for baggage, ticket changes/cancellation, and for aircraft seats (if the carrier charges a fee for a child to sit next to an accompanying adult), sufficient to enable the ticket agent to comply with disclosure requirements under the rule*

*Transactability: Carriers must ensure that adjacent seating fees are transactable by ticket agents if the carrier charges a fee for a child to sit next to an accompanying adult*

**Question (4):** The Department seeks comment on whether the Department should require that carriers provide fee information about critical ancillary services to Global Distribution Systems (GDSs). Why or why not? Should the Department require carriers to distribute the ancillary service fee information to all ticket agents, including GDSs, to which the carrier provides fare, schedule, and availability information? How would Online Travel Agencies (OTAs) and metasearch sites receive ancillary service fee



information from multiple airlines and disclose that information to consumers if airlines do not provide that information to GDSs?

## **5. Compliance Period for Implementation**

### **The proposal:**

*The Department is tentatively of the view that a six-month implementation period from the issuance date of a final rule would be appropriate for carriers and ticket agents to display a first and second checked bag fee, a carry-on bag fee, change and cancellation fee, and family seating fees to consumers whenever fare and schedule information is provided online. It also provides sufficient time to train agents to provide fee information for critical ancillary services to consumers when providing fare and schedule information in person or over the phone. It also takes into account the time needed for carriers to share ancillary service fee information with ticket agents.*

**Question (5):** The Department seeks comment on whether proposed implementation period of six months is too lengthy or too short. If the proposed implementation period is either too lengthy or too short, how long of an implementation period would be appropriate and why? Should the Department impose a date certain by which carriers must share ancillary service fee information with ticket agents?

### **Process for Participation**

At the December meeting, individual members of the public will have an opportunity to make remarks. However, depending on the volume of requests for oral comments that we receive and the time available, we may not be able to hear from everyone who submitted a request. Any oral comments presented must be limited to the objectives of the committee and will be limited to three (3) minutes per person. Individual members of the public who wish to present oral comments must notify the Department of Transportation, no later than Thursday, December 1, 2022, via e-mail at [ACPAC@dot.gov](mailto:ACPAC@dot.gov) that they wish to present oral comments. The e-mail should (1) identify (by the question number as listed in this Notice) the specific question(s) on which you wish to provide comments; (2) state the organization or entity you are representing or that you are speaking as a member of the public; and (3) provide a written summary of the oral comments you wish to present at the meeting on the question(s). Due to the limited time during the meeting, the Department will review all speaking request submissions and notify those who are selected to speak in advance of the meeting. If

there is an interest in addressing a question not identified in this Notice but related to ancillary fee transparency NPRM, please identify that topic in your request.

Members of the public who do not wish to speak at the meeting but have comments on the Ancillary Fee Transparency NPRM that are specifically directed to the ACPAC members for consideration may submit their written comments electronically to the ACPAC Docket (DOT-OST-2018-0190). In addition, any substantive comments on the NPRM to be considered by the Department in the rulemaking should be submitted directly to the NPRM Docket (DOT-OST-2022-0109) by December 19, 2022. The Department is committed to providing equal access to this meeting for all participants. Communication Access Real-time Translation (CART) and sign language interpretation will be provided during the meeting. If you need additional accommodations due to a disability, please contact ACPAC@dot.gov no later than December 1, 2022.

#### **B. December 9, 2022, Meeting**

The December 9, 2022, meeting will begin at 10:00 am EST, and the Committee members will deliberate and decide on recommendations, if any, to make to the Department on (1) information provided to consumers adversely affected by airline delays or cancellations; (2) availability of airline flight information; and (3) the Department's NPRM on Airline Ticket Refunds and Consumer Protections. Members of the public may submit written comments on any of the three topics at any time to the ACPAC Docket (DOT-OST-2018-0190).

#### **IV. Viewing Documents**

Documents associated with the ACPAC may be accessed in the ACPAC Docket (DOT-OST-2018-0190). Documents associated with the NPRM on Enhancing Transparency of Airline Ancillary Service Fees may be accessed in the rulemaking Docket (DOT-OST-2022-0109). Documents associated with the NPRM on Airline Ticket Refunds and Consumer Protections may be accessed in the rulemaking Docket (DOT-OST-2022-0089). Dockets may be accessed at <https://www.regulations.gov>.

After entering the relevant docket number click the link to “Open Docket Folder” and choose the document to review.

Signed in Washington, DC, on or about this 4th day of November 2022.

**John E. Putnam,**

*General Counsel.*

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